

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	STURGIS ET AL.	Examiner:	Jcs F. Pascua
Serial No.:	09/772,189	Group Art Unit:	3727
Filed:	JANUARY 29, 2001	Docket No.:	578.0001US01
Title:	BAG WITH ERGONOMICALLY DISPOSED HANDLE		

---

**DECLARATION UNDER 37 CFR § 1.132**

Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

I, Sheldon Sturgis, declare and state the following:

1. I am an inventor of the subject matter of the patent application identified above.
2. I am the President of Performance Seed based in St. Cloud, MN. Performance Seed is a Minnesota corporation that manufactures and sells bagged products to retailers.
3. The main products that Performance Seed manufactures and sells are wild bird seed and grass seed packaged in bags that include features as claimed in the present application. Specifically, the bags include:
  - a. a bag having first and second sidewalls, the bag having a rectangular-like shape, a vertical centerline and a pouring region formed on one side of the centerline, the bag having an end edge and oppositely disposed corners formed along the edge,
  - b. a handle operably connected to the bag, the entire handle being on an opposite side of the vertical centerline from the pouring region, the handle having an oblong shape, and
  - c. a reinforcing structure comprising one layer of additional material, the reinforcing structure attached to the bag adjacent to the handle, the reinforcing structure having a vertical length less than the first and second sidewalls, the reinforcing structure having a horizontal length less than the first and second sidewalls,
  - d. the handle adjacent to one corner and the pouring region adjacent to the oppositely disposed corner,

- d. the handle adjacent to one corner and the pouring region adjacent to the oppositely disposed corner,
- c. the first sidewall attached to the second sidewall at a region adjacent to the handle,
- f. the handle defined by a hole defined by the first and second sidewalls,
- g. the first and second sidewalls heat sealed to one another in a heat sealed region surrounding the handle

4. Wild bird food and grass seed products packaged in bags including the claimed features were first commercially distributed by Performance Seed in 2002. Table 1 below shows gross sales figures for bird food and grass seed products packaged in bags incorporating the claimed features in the years 2002 through 2005.

**TABLE 1**

<b>Year</b>	<b>Gross Sales</b>
2002	\$ 1,562,270
2003	\$ 3,860,978
2004	\$ 6,922,452
2005	\$ 9,589,617

5. Table 1 above shows that sales of products packaged in seed bags utilizing the claimed features increased by over 513% between 2002 and 2005. Over the same time period, the wild bird food and grass seed markets grew at a rate not significantly greater than inflation. As such, the market share of products packaged in seed bags utilizing the claimed features increased substantially.

6. The wild bird food and grass seed products sold by Performance Seed are commodity products that are largely undifferentiated from competitor's seed products except that they are sold in seed bags utilizing the claimed features.

7. No substantial advertising was done to promote the wild bird food and grass seed products sold by Performance Seed over the period of time from 2002 to 2005.

8. In the years 2003 and 2004, I commissioned market research studies to be performed in order to evaluate consumer's preferences regarding features related to bagged pourable products, such as bagged wild bird food and grass seed.

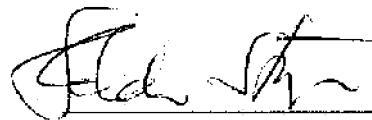
9. Both market research studies were conducted by Diane Sims Page, a professional market research consultant in Minneapolis, MN. In both studies, consumers were selected based on their interest in bird feeding or lawn seed, and were given the company's products to try. They then met to discuss their impressions together.

10. The conclusions from the market research studies included that consumers greatly preferred pourable products in bags that include the claimed features. Specifically, these research studies concluded the following:

- a. The 2003 study's primary conclusion was that all participants felt that the claimed features made it easier to carry and pour the bagged product. The participants felt that these claimed features made a significant difference in the product's value, and that the claimed features would be the determining factor in the purchase of bird food assuming a comparable quality bird food and a competitive price. The participants in the market research study unanimously indicated that they would purchase bird food and lawn seed in bags with the claimed features if the quality and price of the product were comparable to that of products in traditional packages.
- b. The 2004 study's primary conclusion was that the claimed features set our products apart distinctly from competitive products. The participants in the study group noticed the claimed features right away and unanimously indicated that these features made it easier to carry and pour the product. Some people indicated that they would pay more for a product including the claimed features.

11. Taken together, I believe that the facts demonstrate commercial success of the invention as claimed.

12. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements are made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.



Sheldon Sturgis

12/12/06

Date